

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ROLF C. HAGEN (USA) CORP.,

Plaintiff,

v.

MARC WEISS COMPANIES, INC. and  
WEISS ORGANICS, INC.,

Defendants.

RECEIPT # \_\_\_\_\_  
Civil Action AMOUNT \$ 150.00  
SUMMONS ISSUED 3  
LOCAL RULE 4 \_\_\_\_\_  
WAIVER FORM \_\_\_\_\_  
MCF ISSUED \_\_\_\_\_  
BY DPTY. CLK. W.P.  
DATE 1/7/05

**COMPLAINT AND JURY DEMAND**

Rolf C. Hagen (USA) Corp. ("Hagen") brings this civil action against Marc Weiss Companies, Inc. and Weiss Organics, Inc. (collectively "Weiss").

**MAGISTRATE JUDGE** RBC

**THE PARTIES**

1. Plaintiff Rolf C. Hagen (USA) Corp. is a Massachusetts corporation with its principal place of business at 50 Hampden Road, Mansfield, Massachusetts 02048.

2. On information and belief, Marc Weiss Companies, Inc. is a Florida corporation with its principal place of business at 5935 Ravenswood Road, E20, Fort Lauderdale, FL 33312.

3. On information and belief, Weiss Organics, Inc. is a Florida corporation with its principal place of business at 12166 St. Andrews Pl. #106, Miramar, FL 33025 or 3335 South Brocksmith Road, Ft. Pierce, FL 34945.

**JURISDICTION AND VENUE**

4. This is an action for trademark infringement, false designation of origin arising, and dilution under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and for breach of

contract. This Court has jurisdiction pursuant to 15 U.S.C. § 1125 and 28 U.S.C. §§ 1331, 1332, 1338, 1367.

5. This Court has personal jurisdiction over Defendants. The infringing product is currently advertised and can be purchased on an interactive retail website that can be reached from Massachusetts. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

**PLAINTIFF AND ITS RIGHTS IN THE MARKS**  
**CYCLE® AND CYCLEGUARD®**

6. Hagen, founded in 1955, has its International Headquarters in Montreal, Canada and has wholly owned subsidiaries in the United States, England, France, Germany and Malaysia (South East Asia) and does business in Japan, Korea, Thailand, South Africa Spain, Mexico, Italy, Australia, New Zealand, Taiwan and the Philippines. Hagen is well known as a source of high quality pet supplies to the independent pet trade.

7. Hagen has been using the mark CYCLE for bacterial biological filter supplements for aquariums in commerce since 1988.

8. Hagen filed for federal trademark protection on the mark CYCLE in 1989 and the mark issued on the primary register of the United States Patent and Trademark Office in 1990 as Registration No. 1,614,517, a copy of which is attached to this complaint as Exhibit 1.

9. Hagen has been using the mark CYCLEGUARD for aquarium filters in commerce since 1989.

10. Hagen filed for federal trademark protection on the mark CYCLEGUARD in 1989 and the mark issued on the primary register of the United States Patent and

Trademark Office in 1990 as Registration No. 1,603,683, a copy of which is attached to this complaint as Exhibit 2.

11. Hagen's aforementioned federal trademark registrations have become incontestable pursuant to 15 U.S.C. § 1065 as a result of the United States Patent and Trademark Office's acceptance in each case of an affidavit of incontestability following more than five consecutive years of use.

12. Hagen's use of the marks CYCLE and CYCLEGUARD has been continuous and substantial. These marks have been very popular and successful for Hagen, and Hagen has invested heavily in promoting the marks and developing goodwill associated with them.

13. The marks CYCLE and CYCLEGUARD are associated with a single source, Rolf C. Hagen, Inc. The marks are strong, distinctive, and arbitrary marks. Hagen is aware of no other company in the aquarium supplement industry that uses the word CYCLE as all or part of any trademark or service mark.

**DEFENDANTS' UNAUTHORIZED USE OF A  
CONFUSINGLY SIMILAR MARK**

14. In March 1998, Hagen became aware that Weiss was using the confusingly similar mark CYCLE VITAL for an aquarium additive.

15. In April 1998, Hagen wrote to Weiss, demanding that it immediately discontinue use of the mark CYCLE VITAL as an infringement of Hagen's registered marks CYCLE and CYCLEGUARD.

16. In May 1998, Weiss agreed to cease all further use of the marks. In a letter to Hagen, Weiss stated that it would "immediately discontinue use of the word Cycle in identifying its products and as part of a trademark for its products, [refrain] from

its use in packaging and promotional material and [destroy] all such packaging and material on hand.” A copy of that letter is attached to this complaint as Exhibit 3.

17. Hagen recently became aware that Weiss has started using the mark CYCLE BOOST for an aquarium additive, violating its promise to refrain from using the word CYCLE in identifying its products and thus infringing Hagen’s trademarks.

18. On November 18, 2004, Hagen sent a letter to Weiss requesting that Weiss cease and desist from using the infringing mark. Weiss did not respond to this letter.

19. Weiss was on actual notice of Hagen’s use of the marks at least by virtue of their correspondence in 1998 and its promise not to use a confusingly similar mark again.

### **COUNT I**

#### **(Trademark Infringement Under 15 U.S.C. § 1125(a) and Common Law)**

22. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

23. Hagen is the rightful owner of the marks CYCLE and CYCLEGUARD.

24. In addition to its rights in CYCLE and CYCLEGUARD at common law, Plaintiff is the owner of U.S. Federal Registration Nos. 1,603,683 and 1,614,517, both of which are incontestable pursuant to 15 U.S.C. § 1065.

25. Without authorization from Plaintiff, and notwithstanding the fact that Defendants agreed to cease using a mark incorporating the term CYCLE, Defendants are using the mark CYCLE BOOST in connection with goods that are very closely related to the type of goods sold by Plaintiff under the CYCLE and CYCLEGUARD marks.

26. Defendants' past, present and ongoing actions constitute trademark infringement of Plaintiff's CYCLE and CYCLEGUARD marks by using one or more marks that are likely to cause confusion, mistake and/or deception as to source, sponsorship or affiliation, subjecting Defendants to liability under 15 U.S.C. § 1125 and the common law of Massachusetts.

27. Defendants' infringing actions have damaged Plaintiff in an amount to be determined at trial.

28. Defendants' infringing actions will continue unless enjoined by this Court.

29. Plaintiff has no adequate remedy at law, and will suffer irreparable harm to its business, reputation and goodwill unless Defendants' unlawful conduct is enjoined by this Court.

## **COUNT II**

### **(False Designation Of Origin Under 15 U.S.C. § 1125(a))**

30. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

31. The mark CYCLE BOOST used by Weiss on its products constitutes a false designation of origin pursuant to 15 U.S.C. § 1125(a), suggesting to consumers that Defendants' business is associated with or sponsored by Plaintiff.

32. Defendants' unauthorized use of the mark CYCLE BOOST has a substantial effect on interstate commerce.

33. Defendants' false designations of origin have been made in connection with goods (e.g., aquarium additives) from which it makes a profit.

34. Defendants' false designations of origin are likely to cause confusion, mistake or deception as to the origin, sponsorship or approval (by Plaintiff) of the products sold by Defendants under the infringing mark, subjecting Defendants to liability under 15 U.S.C. § 1125(a).

35. Plaintiff has been damaged by Defendants' false designations of origin in an amount to be determined at trial.

36. Plaintiff has been damaged by said conduct of Defendants in an amount to be determined at trial.

### **COUNT III**

#### **(Breach of Contract)**

37. The allegations of the paragraphs above are restated and re-alleged as though fully set forth herein.

38. On May 14, 1998, Weiss promised to cease use of the word CYCLE in identifying its products and as a trademark for its products, in return for Hagen's refraining from suing Weiss for trademark infringement at that time.

39. Defendants breached the contract by incorporating Plaintiff's trademark CYCLE into a trademark for one of its products, namely CYCLE BOOST.

40. Plaintiff has been damaged by said conduct in an amount to be determined at trial.

41. Defendants' actions will continue unless enjoined by this Court.

42. Plaintiff has no adequate remedy at law, and will suffer irreparable harm to its business, reputation and goodwill unless Defendants' unlawful conduct is enjoined by this Court.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff requests that this Court:

A. Preliminarily and permanently enjoin Defendants, including all partners, officers, agents, servants, employees, attorneys, and all those persons and entities in active concert or participation with them, from further infringement, false designation of origin, unfair competition and unfair trade practices, with respect to Plaintiff's CYCLE and CYCLEGUARD marks, pursuant to 15 U.S.C. § 1125 or otherwise.

B. Direct Defendants to pay Plaintiff its actual damages, any additional profits realized by Defendants, and the costs of this action pursuant to 15 U.S.C. § 1117(a).

C. Direct Defendants to pay Plaintiff its damages as a result of Defendants' breach of contract.

D. Enter judgment that Defendants' trademark infringement and false designation of origin has been knowing and willful.

E. Award Plaintiff its attorney fees and costs in prosecuting this action, pursuant to 15 U.S.C. § 1117.

F. Award Plaintiff treble damages pursuant to 15 U.S.C. § 1117(b).

G. Award Plaintiff such further relief as this Court may deem just and necessary.

**JURY DEMAND**

Hagen demands a trial by jury of all issues so triable.

ROLF C. HAGEN, INC.

By its attorney,

A handwritten signature in black ink, appearing to read "Michael A. Albert", written over a horizontal line.

Dated: January 7, 2005

Michael A. Albert, BBO # 558566  
malbert@wolfgreenfield.com  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Boston, Massachusetts 02210  
(617) 646.8000 Phone  
(617) 646.8646 FAX



**Int. Cl.: 1**

**Prior U.S. Cl.: 6**

**United States Patent and Trademark Office** **Reg. No. 1,614,517**  
**Registered Sep. 25, 1990**

**TRADEMARK  
PRINCIPAL REGISTER**

**CYCLE**

**ROLF C. HAGEN (USA) CORP. (MASSACHU-  
SETTS CORPORATION)  
50 HAMPDEN ROAD  
MANSFIELD, MA 02048**

**FOR: BACTERIAL BIOLOGICAL FILTER  
SUPPLEMENTS FOR USE IN HOME AQUARI-  
UM, IN CLASS 1 (U.S. CL. 6).**

**FIRST USE 9-19-1988; IN COMMERCE  
9-19-1988.**

**SER. NO. 73-813,361, FILED 7-18-1989.**

**RACHEL BLUE, EXAMINING ATTORNEY**

**Int. Cl.: 16**

**Prior U.S. Cls.: 31 and 50**

**United States Patent and Trademark Office** **Reg. No. 1,603,683**  
**Registered June 26, 1990**

**TRADEMARK  
PRINCIPAL REGISTER**

**CYCLEGUARD**

ROLF C. HAGEN (USA) CORP. (MASSACHU-  
SETTS CORPORATION)  
50 HAMPDEN ROAD  
MANSFIELD, MA 02048

AQUARIUM WATER, IN CLASS 16 (U.S. CLS. 31  
AND 50).

FIRST USE 9-21-1987; IN COMMERCE  
6-2-1989.

FOR: AQUARIUM FILTERS FOR FILTERING  
LARGE PARTICULATE MATTER, COLORS  
AND GASES, AND AMMONIA FROM THE

SER. NO. 73-806,812, FILED 6-15-1989.

AMOS T. MATTHEWS, JR., EXAMINING AT-  
TORNEY

AO 120 (Rev. 3/04)

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Massachusetts on the following ☒ Patents or ☒ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT <u>Massachusetts</u>
PLAINTIFF ROLF C. HAGEN (USA) CORP.		DEFENDANT MARC WEISS COMPANIES, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,614,517	9/25/1990	ROLF C. HAGEN (USA) CORP.
2 1,603,683	6/26/1990	ROLF C. HAGEN (USA) CORP.
3		
4		
5		

In the above--entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED 1/7/2005	INCLUDED BY <input checked="" type="checkbox"/> Amendment <input checked="" type="checkbox"/> Answer <input checked="" type="checkbox"/> Cross Bill <input checked="" type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,614,517	9/25/1990	ROLF C. HAGEN (USA) CORP.
2 1,603,683	6/26/1990	ROLF C. HAGEN (USA) CORP.
3		
4		
5		

In the above--entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

ROLF C. HAGEN (USA) CORP.

(b) County of Residence of First Listed Plaintiff BRISTOL, MASSACHUSETTS  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael A. Albert, BBO # 558566  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Ave., Boston, MA 02210 (617) 646.8000**DEFENDANTS**

MARC WEISS COMPANIES, INC.

County of Residence of First Listed Defendant BROWARD, FLORIDA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |   |  |
|---|---|---|--|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4            |
| Citizen of Another State                | PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | PTF <input type="checkbox"/> 5 DEF <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 | Foreign Nation  | PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Custom or Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)

Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. § 1051 Infringement of Trademark CYCLE®

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMANDS**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S)** (See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

1/7/05

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) ROLF C. HAGEN (USA) CORP. v. MARC WEISS COMPANIES, INC.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.  
N/A
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)  
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?  
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?  
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- A. If yes, in which division do all of the non-governmental parties reside?  
YES ☒ NO ☐  
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?  
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)  
YES ☐ NO ☐
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME Michael A. Albert
- ADDRESS Wolf, Greenfield & Sacks, P.C., 600 Atlantic Avenue, Boston, MA 02210
- TELEPHONE NO. 617-646-8000